

# In the United States Patent and Trademark Office

In re the Application of:

Leslie Ernest )

Serial Number: 10/824,808 )

Group: 3624

Docket Number: AUS920040042US1 )

Examiner: Miller, Alan S.

Filed on: 04/15/04 )

For: System and method for rating )

performance of computing grid service )

providers )

## REPLY BRIEF

Appellant is in receipt of the Examiner's Answer, and after review of it, respectfully maintains all arguments set forth in the Appeal Brief and arguments of record in the prosecution history.

The Examiner's Answer is in a format which heavily quotes the Appeal Brief, the Appeal Brief in turn heavily quoted the Examiner's final action, so at many points, it is difficult to readily ascertain whose statements are whose. For brevity of the record, this Reply Brief will avoid re-quoting Examiner's Answer or the final rejections, but instead will refer to these papers by page and line number.

Appellant respectfully submits that there seems to be a great deal of argument of record regarding the rejections including Official Notice, which is evidenced by the Benjamin and Shoquist references. Appellant respectfully agrees that Official Notice is very often a contentious ground for rejecting patent claims (Examiner's Answer, page 14, lines 13 - 15). Official Notice may be used for a range of purposes, from proper use to expedite examination by avoiding discussion of clearly well-known facts, to use to provoke further examination and discussion where the facts are arguable or are not readily agreed-upon, to improper use to

summarily reject claims.

Further, on page 15, lines 15 - 16, of the Examiner's Answer, it is acknowledged that Appellant "*disagreed*" with the Examiner's conclusions regarding Al-Theneyan in view of newly-cited Official Notice. The terms "disagree" and "traverse" are well known to be synonymous, as evidenced by the external definition provided by the Appellant to the Examiner.

Appellant has argued against the teachings of the Benjamin and Shoquist references, both as direct grounds for rejection (in response to the first two Office Actions as set forth in the Appendix to this Reply Brief), and as evidence of Official Notice (in the Appeal Brief, pages 12 - 16).

In summary, we believe the examination record shows that the Appellant timely signaled traversal of the Official Notice, and that the plentiful arguments of record constitute the procedurally-required specific reasons for why Appellant believes the Official Notice to be improper and not well known fact. Appellant respectfully submits that relying upon specific prior art references initially applied in claim rejections, later to be replaced with a more general Official Notice as evidenced by the specific references, without consideration of the arguments already on the record, is failure to reconsider the rejections as required by the Patent Law, and is an unjust and unfair use of the Official Notice policy of the USPTO. Further, the proposed combination of Al-Theneyan in view of Official Notice as evidenced by Benjamin and Shoquist fails to teach all claim elements, steps, and limitations, such as arguments about the sub-ratings (pg. 13 of the Appeal Brief), components of grid computing (pages 14 and 15 of the Appeal Brief).

For these reasons, and for those already of record, Appellant respectfully submits that errors in examination have occurred, and respectfully requests allowance of the claims.

Respectfully Submitted,  
/ Robert H. Frantz /  
Robert H. Frantz, Reg. No. 42,553  
Tel: (405) 812-5613

Franklin Gray Patents, LLC  
P.O. Box 23324  
Oklahoma City, OK 73127  
Tel: 405-812-5613, Fax: 405-440-2465

**APPENDIX****Arguments of Record Regarding Benjamin and Shoquist**

Please note that in the Appellant's reply to the Examiner dated 8/7/2009, Appellant argued against the Examiner's interpretations of Benjamin's teachings (when Benjamin was being employed directly in the grounds for rejection):

From page 9 of Reply to the Examiner filed on 8/7/2009:

First, please consider that our received reports are received from a grid computing resource (a device or resource in a grid computing environment), and the statistics contained within the reports relate to the completion of an electronic computerized transaction. We are amending our claims to clarify this, in accordance with our specification ("*resource vendors in a grid computing environment*" ABSTRACT; "*calculate grid vendor aggregate rating*" Fig. 1 #13; example Grid Vendor Rating Report Fig. 2 #20; "*grid service provider vendor rating system*" ¶0026; "[t]he rating logic (62) obtains real-time data from grid resource (54) in self-reported job statistics (61), as well as statistics (45) reported from the Results Manager" ¶0050; etc.).

The Benjamin reference is not directed towards service providers *in a computing grid*, but instead to "service providers" as "*trading partners*". Such "*trading partners*" are not computing resources in a computing grid, but instead are *companies* with whom a customer may want to "*trade*". Companies and computers are not the same, of course. Benjamin compares their automatically generated trading partner rating system to eBay's sellers' ratings, Moody's and Standard & Poor's debt ratings for companies (¶¶0003 - 0005).

Please note that in the Appellant's reply to the Examiner dated 2/2/2009, Appellant argued against the Examiner's interpretations of Shoquist's teachings (when Shoquist was being employed directly in the grounds for rejection):

From Appellant's Reply to the Examiner filed on 2/2/2009:

Neither Benjamin, Jain or Shoquist teach or suggest receipt of self-reports from an Online Transaction Processing (OLTP). Jain was held to disclose "batch jobs", which is not the same as an OLTP system in which each transaction is processed individually. For example, according to TechTarget.com as of 01/30/2009, OLTP is defined as:

OLTP (online transaction processing) is a class of program that facilitates and manages transaction-oriented applications, typically for data entry and retrieval transactions in a number of industries, including banking, airlines, mailorder, supermarkets, and manufacturers. Probably the most widely installed OLTP product is IBM's CICS (Customer Information Control System).

Today's online transaction processing increasingly requires support for transactions that span a network and may include more than one company. For this reason, new OLTP software uses client/server processing and brokering software that allows transactions to run on different computer platforms in a network.

But, according to the same source, "batch jobs" are defined as:

In a computer, a batch job is a program that is assigned to the computer to run without further user interaction. Examples of batch jobs in a PC are a printing request or an analysis of a Web site log. In larger commercial computers or servers, batch jobs are usually initiated by a system user. Some are defined to run automatically at a certain time.

In some computer systems, batch jobs are said to run in the background and interactive programs run in the foreground. In general, interactive programs are given priority over batch programs, which run during the time intervals when the interactive programs are waiting for user requests.

The term originated with mainframe computers when punched cards were the usual form of computer input and you put a batch of cards (one batch per program) in a box in the sequence that they were to be fed into the computer by the computer operator. (Hopefully, you got the output back the next morning.)

We believe that those ordinarily skilled in the art recognize a fundamental

difference between a transaction-oriented mode of computing such as OLTP, and a batch-oriented mode of computing such as a batch job. Since Benjamin, Jain or Shoquist are silent regarding OLTP, we request allowance of our claims.

Benjamin, Jain and Shoquist are also silent regarding determining sub-ratings selected from a group comprising percentage of jobs completed, percentage of jobs completed within specified time constraints, an interactiveness rating, and a cost compliance rating. It was held that Benjamin teaches a sub-rating based on results accuracy, which we have deleted from the presented Markush group. Results accuracy is not the same as percentage of jobs completed, percentage of jobs completed within specified time constraints, an interactiveness rating, or a cost compliance rating.